

R E M A R K S

Claim Status

Claim 58 is rejected under 35 U.S.C. 112.

Claims 38, 39, 41-45 and 58-60 are rejected under 35 U.S.C. 103 on Medoff (U.S. 5,709,682) in view of Outerbridge.

Claim 40 is recited under 35 U.S.C. 103 on Medoff and Outerbridge in further view of Gaspar.

Claim Amendments

Independent Claims 38 and 44 have been amended to be more specific to the claimed combination.

The dependent claims have been amended to be consistent with their parents.

Claim 58 has been amended to provide antecedent support and thereby overcome the rejection under 35 U.S.C. 112.

The independent Claims 38 and 44 have been amended to clearly distinguish over the cited art.

New dependent Claims 61, 62 have been added.

Argument for Patentability

The principal reference of Medoff has been discussed in the previous response and the arguments presented therein apply equally hereto and are incorporated by reference.

Briefly, Medoff refers to an entirely different structure which functions in a completely different way. Namely, Medoff shows a two part clamp to set the fracture. The two parts grip the fragment from the outside and inside to clamp the fragment between the parts. The Examiner refers to the outside part 13. This part has parallel legs of equal length and pointed projections at the tip end to pierce and secure the bone fragment in a clamped state. This is in

contrast to the buttress pin of the invention in which the bent distal ends of the legs included portions that bear against and buttress the bone fragment as shown in Figs. 1 and 2. Independent Claims 38 and 44 have been amended to emphasize the construction and distinguish over the pointed projections of Medoff which pierce the bone fragment. The second clamp of Medoff is a single arm having a pointed projection or a counter bearing support to provide the clamping function.

In citing Medoff, the Examiner considers the surgical pin as suggested which it is not. It has flat, plate-like arms not a wire. The Examiner further considers the distal ends 5 to be bent away and capable of buttressing a bone surface. On the contrary, the ends are straight and the pointed projections 6 do not buttress the bone fragment by bearing against it but dig into it as one part of the two part clamp. This is now clearly distinguished by the bend at the ends of the legs which project out of plain to bear against a cortical surface of a bone fragment to buttress the bone fragment as now claimed.

The Examiner proposes to modify Medoff with the shape shown in Outerbridge. This rejection is untenable as Outerbridge is directed to an entirely different class of art that has nothing whatever to do with buttress pins and can not be combined with Medoff under 35 U.S.C. 103.

Namely, Outerbridge is directed to a staple that is used to compress and hold two pieces of bone together. In particular, Outerbridge is connected with the ratcheting mechanism. One piece staples of this type have been known and (usually used for high tibial osteotomies. This staple is a solid, stiff predominantly U-shaped piece of metal that is driven into the bone fragments on either side of a fracture or osteotomy cut. This particular staple is configured so that when a wedge shaped section of bone is removed from the proximal tibia (thus named high tibial osteotomy) and the two bone fragments are brought together, the width of the bone suddenly changes from one diameter to another. The staple of Outerbridge designed to have one leg in one fragment, the other leg in the other fragment, and the zig-zag connecting piece along the surface of the bone. The dog-leg portion of the piece fits the bottom of the cut of the top fragment so that the lower leg can be seated against the bone. It is constructed to prevent the lower leg to stickup in the soft tissue. Thus, this construction is used to accommodate a sudden transition of the surface cortex from one elevation to another.

These staples are not wire implants in multiple planes. Therefore, it is not obvious

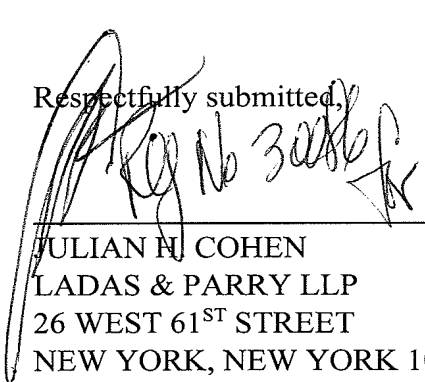
to consider a transition of the bone in width that is out of the plane of the legs. Moreover, the transition is not related to a transition in the width of the bone but rather the height and fundamentally it is not obvious to combine the references.

Regarding the hairpin of Gaspar this is completely unrelated art and is *prima facie* inapplicable in regard to bone buttress pins. In the rejection of Claim 40 the Examiner considers that the wire form (which is not for buttressing a bone fragment but for keeping the wire form from backing out of hair) shows a region 4 that “utilizes a bend in a direction away from one another”. Gaspar seems to show paired segments that are parallel to one another, and not the region bending away from another. Again, the offset aspect of the invention has to do with two issues: 1) to change or vary the width of the U-shaped bend portion in the plane of the U-shaped bend portion to accommodate variations in the width of the bone so that it does not extend past the side of the bone into the soft tissue and 2) providing an implant in which the shortest distance from each leg axis is the base of the implant has a different value for the two independent legs. Neither of these are suggested in the cited patents.

Conclusion

In view of the above action and comments it is respectfully submitted that all claims in the application are in allowable condition and favorable reconsideration is requested.

Respectfully submitted,


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